Filed 7/12/10 In re K.M. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.M., a Person Coming Under the Juvenile Court Law.	B220920 (Los Angeles County Super. Ct. No. CK57523)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ROSALIN M., Objector and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Donna Levin, Referee (pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Aida Aslanian, under appointment by the Court of Appeal, for Objector and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Frank J. DaVanzo, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

R.M. (mother) the mother of K.M., born September, 2007, appeals from the termination of her parental rights to K.M. Mother contends that the juvenile court erred in failing to find the parental visitation exception (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i)[1] (§ 366.26(c)(1)(B)(i))) and the sibling relationship exception (section 366.26, subdivision (c)(1)(B)(v) (section 366.26(c)(1)(B)(v))) to the termination of parental rights. Mother further contends that the juvenile court was biased against her and that such bias violated her rights to due process and equal protection. We affirm.

BACKGROUND

The following facts and procedural history are taken from our May 12, 2009, opinion (case number B211497) denying mother's petition for extraordinary relief seeking to set aside the juvenile court's section 300 findings and denial of family reunification services:

"K.M. was born in September of 2007. On April 24, 2008, the Department of Children and Family Services (the Department) received a referral that alleged that mother was neglecting K.M. The referral also asserted that mother's home was dirty, piled with trash, and contained roaches.

"An emergency services worker went to mother's home and determined that the allegations were unfounded. She detained K.M., however, because of the mother's prior history with the Department concerning the death of K.M.'s sibling, K.S. The detention report stated that mother's live-in companion, and the father of K.S., D.S., had repeatedly severely abused K.S. by striking him with a brush, a comb, a belt and his hands. In addition, D.S. had grabbed K.S. by the legs resulting in K.S. sustaining a bump to his head. Further D.S. repeatedly locked K.S. in a closet when the child cried. D.S.'s actions led to the death of K.S. four months after he was born. The coroner found that K.S. had

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[1] All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

an acute left parietal skull fracture. Mother was present when D.S. abused his four month old child and took no action to protect K.S. Moreover, mother also repeatedly locked her child, K.S., and her other child, K.B. in a closet. D.S. abused mother's other children, and again, mother did nothing to stop him from physically harming her children. As a result, mother's older children were removed from her custody.

"When questioned about the death of the infant, K.S., mother stated: 'Now, do I think that he killed the baby? Yes I do. There was always [a] little jealousy about how much attention I was spending with the baby and doing things for the baby. I think he was capable of it.' As a result of the investigation, on April 29, 2008, a dependency petition was filed regarding K.M. alleging that she came within the provisions of section 300, subdivisions (a) (b), (f) and (i). A first amended petition was filed on June 24, 2008 and added section 300, subdivision (j), as well as the 'alleged father,' D.S. Despite the fact that mother believed that D.S. had killed her child, and, as a result the older children had been removed from her custody, she continued to see D.S. She had an encounter with D.S. in December, 2006. Specifically, mother testified that she had met D.S. at a party, 'emotions [got] the best of [her] and that's how we ended up having sex.' Consequently, D.S. could well be the father of K.M. despite the fact that mother named two other men as the possible father.

"On August 7, 2008, the adjudication hearing as to K.M. was held. The juvenile court sustained allegations under section 300, subdivisions (a) (substantial risk child will suffer seriously physical harm, (b) (substantial risk child will suffer serious physical harm or illness due to negligence or failure to supervise), (f) (parent caused death of a child by abuse of neglect), and (j) (sibling has been abused and neglected and risk child will be abused or neglected), as a result finding that mother was complicit in K.S.'s death; that D.S. was not out of mother's life; that there was a substantial risk of harm to K.M. because of D.S.'s access and mother's previous failure to protect her children; and that there was a substantial risk of harm to K.M. The juvenile court continued the matter for disposition.

"Following the contested hearing on October 17, 2008, the juvenile court removed the child from the parents' custody pursuant to section 361, subdivision (c), and ordered no reunification services pursuant to section 361.5, subdivisions (b) (4), (6), and (10) and section 361.5, subdivision (c). The matter was set for a hearing to select and implement a permanent plan under section 366.26."

Mother filed a petition for extraordinary relief in this court seeking to set aside the juvenile court's section 300 findings and denial of family reunification services. In her petition, mother made the following contentions: the juvenile court erred at the dispositional hearing by shifting the burden of proof to her, by applying the wrong standard, by admitting hearsay statements in a social worker's report, and by making a decision that lacked substantial evidence to support it. Mother only challenged the dispositional order on the ground that the jurisdictional order was erroneously granted. Because sufficient evidence supported the section 300, subdivision (f) allegation – "[t]he child's parent or guardian caused the death of another child through abuse or neglect" – we denied mother's petition.

The following facts and procedural history concern matters not addressed in our May 12, 2009, opinion:

At the October 17, 2008, hearing, the juvenile court stated that it wanted a progress report prepared for November 14, 2008,[2] that included a report on the placement of K.M. with her maternal aunt, M.W., and uncle in Arizona. Counsel for the Department stated that an Interstate Compact for the Placement of Children (ICPC) referral had been made to Arizona. The Department's November 14, 2008, Interim Review Report recommended that K.M. remain placed with her caregiver, A.J., until the Department received ICPC approval to place her with maternal aunt in Arizona. On November 14, 2008, the juvenile court gave the Department discretion to place K.M. with maternal aunt in Arizona once the ICPC placement was approved.

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[2] The juvenile court misspoke when it stated that it wanted the report prepared for November 14, 2009.

The Department's February 13, 2009, Section 366.26 Report states that K.M.'s caregiver reported that mother visited K.M. for half a day every Saturday and Sunday and went on outings with K.M. such as to the zoo, museum, and park. According to the caregiver, mother participated in K.M.'s life and outside activities. The caregiver stated that she was comfortable allowing mother to have extended visits on the weekend due to conflicting schedules during the week. The report states that the caregiver provided K.M. with unconditional love and had been more than cooperative with mother by allowing mother to have longer visits with K.M. The caregiver informed the social worker that she was interested in being K.M.'s legal guardian.

The report states that maternal aunt was "more than interested" in adopting K.M. and had been taking adoptive care classes. The ICPC was approved on December 19, 2008. The Department requested that K.M. be placed with maternal aunt. Due to this court's February 11, 2009, stay order, the juvenile court declined to place K.M. with maternal aunt and continued the matter.

The Department's April 17, 2009, Status Review Report states that K.M. was happy and comfortable in the caregiver's care. The caregiver had no issues or concerns with K.M. The caregiver was in the process of adopting a three-year-old child and also was a foster parent to a two-month-old child. The caregiver reported that mother had regular weekend monitored visits with K.M. and met at the caregiver's house or McDonald's. Mother visited a half day on Saturdays and Sundays. Mother also went on outings with K.M. such as to the zoo, museum, and park. Mother actively participated in K.M.'s life and outside activities. According to the caregiver, K.M.'s 18-year-old sister, K.G., attended almost all of mother's visits. K.M. reportedly enjoyed visiting with mother and often smiled and laughed with mother. Maternal aunt reportedly had spoken to K.M. only twice, but was planning to come to California to visit her. The Department continued to recommend that K.M. be placed in maternal aunt's home in Arizona. On April 17, 2009, the juvenile court continued the matter to June 5, 2009, for a section 366.26 hearing.

A Last Minute Information for the Court for the June 5, 2009, hearing states that maternal aunt continued to be committed to adopting K.M. Maternal aunt and her family expressed "extreme love and ability to care for the child." Maternal aunt's family had made the appropriate space and accommodations for K.M. and had made several face-to-face visits and telephone contact with K.M.

At the June 5, 2009, hearing, the juvenile court asked if any party wished to address the Department's request that K.M. be placed with maternal aunt in Arizona. Mother's counsel objected, stated that K.M. was bonded with mother and her caregiver and that although maternal aunt was a relative, maternal aunt did not have the same bond with K.M. as did K.M.'s caregiver. K.M.'s counsel requested the matter be put over so that the Department could inquire of the caregiver, apparently concerning whether the caregiver was interested in adopting K.M. or remained only interested in serving as K.M.'s legal guardian.

The juvenile court stated that this court affirmed the juvenile court's decision to deny family reunification services, that the caregiver "interfered with that and allowed the mother to have as much visitation as she has, causing the child to have some sort of bond with the mother, that's not what the court ordered in this matter. That is actually opposite of what the court had envisioned for this matter."

K.M.'s counsel stated her concern that K.M's bond with her caretaker was stronger than her bond with maternal aunt. The juvenile court responded that it was not concerned with mother's bond with K.M. The juvenile court stated its belief that mother had not had K.M. in her care and that mother might be "somewhat like an aunt that comes to visit and brings presents and has a wonderful time with the child, but she hasn't had day-to-day care with this child since the child was detained."

Mother's counsel objected that no determination had been made concerning whether mother cared for K.M. during visits. The juvenile court observed that if mother had been caring for K.M. during visits, such care would violate a court order. Mother's counsel disagreed. The juvenile court stated that it was concerned with K.M.'s well-being and not with mother's well-being. The juvenile court stated that this court had

affirmed the juvenile court's "findings that this mother was not fit to raise this child and not fit to have family reunification with this child." Mother's counsel stated that she was not arguing about family reunification, but whether it would be damaging to K.M. to remove her from her caretaker and/or mother.

Mother's counsel requested that K.M. remain in her placement with her caregiver pending a contested section 366.26 hearing. The juvenile court expressed its belief that it was detrimental for K.M. to remain with the caregiver rather than being placed with maternal aunt. The juvenile court stated its concern that if K.M. remained placed with the caregiver, the caregiver could continue to give mother "'open visitation.'" Accordingly, the juvenile court ordered that mother be given reasonable monitored visits once a month in the Department's office and that the caregiver not be the monitor. Mother's counsel objected. The juvenile court set a contested "section 366.26" hearing for September 4, 2009, concerning whether K.M. should be placed in Arizona with maternal aunt.

On June 12, 2009, mother filed an application for rehearing concerning the juvenile court's order limiting visitation to once a month. Before the juvenile court ruled on the petition, the parties agreed that mother would have reasonable, monitored visitation with a Department-approved monitor.

On June 30, 2009, K.G. and mother filed section 388 petitions – K.G. in part to maintain K.M.'s placement with her caregiver and mother to grant her reunification services. On July 7, 2009, the juvenile court denied both petitions. In denying mother's petition, the juvenile court addressed its failure to modify its initial order granting mother visitation of three hours three times a week. The juvenile court stated that it was not fair to mother or K.M. to have allowed such visitation "when the court knew that the mother would have her rights terminated." The juvenile court ordered that K.G. was to have monitored visits with K.M. with, apparently, the Department to have discretion to liberalize K.G.'s visitation.

A Last Minute Information for the Court for a July 2, 2009, hearing states that the caregiver was only interested in legal guardianship over K.M. and was not interested in

pursuing adoption. The Department's July 2, 2009, Interim Review Report requests that the juvenile court place K.M. with maternal aunt because the ICPC approval would expire if K.M. was not placed in Arizona by July 6, 2009. On July 2, 2009, the juvenile court ordered K.M. placed with maternal aunt in Arizona.

In a Last Minute Information for the Court for a September 4, 2009, hearing the Department stated that it had completed publication for two of K.M.'s three alleged fathers. The information requested a 90-day continuance so that publication could be completed for the third alleged father.

The Department's October 16, 2009, Interim Review Report states that K.M. was placed in maternal aunt's home on July 6, 2009. Maternal aunt provided K.M. with a safe and nurturing home environment. Maternal aunt reported that K.M. was a happy child, and maternal aunt had no issues or concerns with K.M. An ICPC worker had been assigned to the case and reported that K.M. was doing well in maternal aunt's home. Mother had not visited K.M. since K.M. was placed with maternal aunt.

The Department's December 4, 2009, Interim Review Report recommended that K.M. remain placed with maternal aunt. Attached to the report is an ICPC Quarterly Report for the months of July, August, and September 2009. The quarterly report states that maternal aunt's mother cared for K.M. when maternal aunt was at work. Maternal aunt was looking for suitable daycare for K.M. because she believed that K.M. is very intelligent and needed to be around other children. In the quarterly report, maternal aunt reported to the Arizona family support specialist that K.M. was doing well in her home. K.M. ate well and slept through the night. K.M. got along well with maternal aunt's daughter.

A Last Minute Information for the Court for the December 4, 2009, hearing stated that publication had been completed for the three alleged fathers. The information recommended that the parental rights of mother and the alleged fathers be terminated. At the December 4, 2009, section 366.26 hearing, the Department rested after certain reports and other documents were admitted in evidence. To establish visitation with K.M., mother called A.J., K.M.'s former caregiver. A.J. testified that she received K.M. when

K.M. was about four months old and cared for K.M. until K.M. was 23 months old.[3] According to A.J., mother visited K.M. twice a week and never missed a visit. Mother visited every weekend and sometimes during the week. Saturday visits lasted three hours, and visits during the week lasted an hour and a half. A.J. monitored all of the visits. Mother visited with K.M. at a McDonald's and at a park. Once, they went to the zoo. Mother called K.M. at least five nights a week to say goodnight and to tell K.M. that she loved her. K.M. expected mother's nighttime telephone call and was excited during the call.

K.M. called mother "mommy" and A.J. "auntie." When mother arrived for visits, K.M. was always excited to see her. K.M. would run to mother and jump into her arms. K.M. showed mother affection during the visits by hugging and kissing her, playing with her, and grabbing her hand and saying, "Come on, mommy. Let's do this and let's do that." When K.M. fell or needed solace during the visits, she would go either to A.J. or to mother, whoever was closer. Mother brought K.M. toys and occasionally clothes.

At the end of visits, K.M. would say, "Later mommy. See you later, Mommy." Because K.M. had been with A.J. since she was four months old, K.M. knew she would be going home with A.J. Occasionally, K.M. would express sadness and cry when mother left.

K.M.'s sister, whom she called "Key-Key," went to almost every weekend visit and sometimes went to visits during the week. K.M. played with Key-Key at the McDonald's and the park. K.M. seemed to enjoy her time with Key-Key. Occasionally, K.M. would show sadness when her visits with Key-Key ended, but not every time. When asked if K.M. showed the same amount of sadness leaving Key-Key as mother, A.J. responded that K.M. was sad that a visit ended and that K.M. had a good time on the visits. K.M. also spoke with Key-Key on the telephone.

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[3] The record establishes that K.M. was nearly eight months old when she was detained and placed with A.J. and just over 22 months when she was placed with maternal aunt.

According to A.J., K.M. would ask for mother "every now and then," but always asked for "Key-Key." If A.J. was taking K.M. somewhere and they passed a McDonald's, K.M. would say Key-Key. A.J. also testified that K.M. did not ask for Key-Key more than she asked for mother.

A.J. had no trouble feeding K.M. or getting her to go to sleep. K.M. was always with A.J., did not go to daycare, and had no behavior problems. A.J. described K.M. as a friendly and "very outgoing" child who was able to make friends. K.M. had a relationship with all of A.J.'s sisters. K.M. called A.J.'s sisters and their husbands "grandma" and "grandpa." K.M. was excited to see "grandma" when she would come over, and K.M. would run to "grandma."

Following K.M.'s removal from A.J.'s home, maternal aunt placed a call to A.J. on Sundays so that K.M. could speak with A.J.'s three-year-old child with whom K.M. was very close. A.J. and mother saw K.M. in September 2009, when maternal aunt attended a family or class reunion in San Diego.

Following A.J.'s testimony, the Department and K.M.'s counsel argued that the juvenile court should terminate mother's parental rights and the parental rights of the alleged fathers. Mother's counsel argued that the juvenile court should not terminate mother's parental rights because the parental visitation and sibling relationship exceptions to the termination of parental rights applied.

Following argument by the parties, the juvenile court terminated mother's and the alleged fathers' parental rights. The juvenile court observed that it had ordered reasonable visitation for mother but that the Department allowed mother to have more than reasonable visitation and daily telephone calls. Such contact did not, however, establish a parental bond that met the "criteria." The juvenile court found that mother never acted as K.M.'s mother. K.M. called mother "'mommy,' but that was a name only." The visits never took place in a home setting, mother never cared for K.M. – mother never fed, clothed, diapered, or took care of K.M. when she was sick.[4] The

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[4] A.J. testified that K.M. never got sick while in her care.

juvenile court stated that although it had no reason to doubt that mother loved K.M. and that K.M. enjoyed her visits with mother, their relationship was not such that K.M. would suffer a "detriment" if the relationship was severed. Moreover, the juvenile court observed, K.M. was placed with mother's sister with whom mother initially requested that K.M. be place and with whom mother maintained a relationship.

As for K.M.'s sister, K.G., the juvenile court found that K.G. was an adult who could travel to see K.M., and there were no restrictions on K.G. visiting K.M. For those reasons, the sibling bond exception did not apply.

DISCUSSION

I. The Parental Visitation Exception To The Termination Of Parental Rights

Mother contends that the juvenile court erred in failing to find the parental visitation exception to the termination of parent rights under section 366.26(c)(1)(B)(i). The juvenile court did not err.

A. Standard of Review

Some courts have held that challenges on appeal to a juvenile court's determination under section 366.26(c)(1)(B)(i) are governed by a substantial evidence standard of review. (See, e.g., *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 & fn. 4.) Under a substantial evidence standard of review "'"the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted," to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.' [Citation.]" (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, abrogated on other grounds as stated in *DeBerard Properties, Ltd. v. Lim* (1999) 20 Cal.4th 659, 668.) We do not evaluate the

credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. (*In re Casey D.*, *supra*, 70 Cal.App.4th at pp. 52-53.)

Other courts have applied an abuse of discretion standard of review. (See, e.g., *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449.) Under an abuse of discretion standard of review, we will not disturb the juvenile court's decision unless the juvenile court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Jasmine D.*, *supra*, 78 Cal .App.4th at p. 1351.) In this case, we need not decide whether a juvenile court's ruling on the section 366.26(c)(1)(B)(i) exception is reviewed for substantial evidence or abuse of discretion, because, under either standard we affirm the juvenile court's decision.

B. The Parental Visitation Exception

"At a permanency plan hearing, the court may order one of three alternatives: adoption, guardianship or long-term foster care. (*In re Taya C.* (1991) 2 Cal.App.4th 1, 7 [2 Cal.Rptr.2d 810].) If the dependent child is adoptable, there is a strong preference for adoption over the alternative permanency plans. (*San Diego County Dept. of Social Services v. Superior Court* (1996) 13 Cal.4th 882, 888 [55 Cal.Rptr.2d 396, 919 P.2d 1329]; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 808-809 [92 Cal.Rptr.2d 20].)" (*In re S.B.* (2008) 164 Cal.App.4th 289, 296-297.)

Once a juvenile court finds that a child is likely to be adopted after removing the child from parental custody and has terminated reunification services, parental rights may be terminated unless the court finds a compelling reason for determining that doing so would be detrimental to the child under certain exceptions set forth in section 366.26, subsection (c)(1). (*In re Celine R.* (2003) 31 Cal.4th 45, 52-54.) "The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption." (*Id.* at p. 53.)

The parental visitation exception in section 366.26(c)(1)(B)(i) provides that parental rights will not be terminated and a child freed for adoption if the parent has

"maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship." (Italics added.) Application of the parental visitation exception consists of a two-prong analysis. (*In re Aaliyah R., supra,* 136 Cal.App.4th at pp. 449-450.) The first is whether there has been regular visitation and contact between the parent and child. (*Id.* at p. 450.) The second is whether there is a sufficiently strong bond between the parent and child that the child would suffer detriment from its termination. (*Ibid.*) The parent/child relationship must promote "the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

The visitation exception does not apply when a parent fails to occupy a parental role in her child's life. (*In re Jasmine D., supra,* 78 Cal.App.4th at p. 1350; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51 [parents who have essentially never had custody of children or advanced beyond supervised visitation will have a difficult time establishing the parental visitation exception].) "[T]o establish the exception in section 366.26, subdivision (c)(1)(A), the parents must do more than demonstrate 'frequent and loving contact' [citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.]" (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108.) A relationship sufficient to support the visitation exception "aris[es] from day-to-day interaction, companionship and shared experiences." (*In re Casey D., supra,* 70 Cal.App.4th at p. 51.) Whether the exception applies is determined "on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or

'negative' effect of interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond." (*In re Autumn H., supra,* 27 Cal.App.4th at p. 576.)

Parents bear the burden of establishing that the visitation exception to termination of parental rights applies. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) A parent must show that she has maintained regular visitation and contact with the child and that a benefit to the child from continuing the relationship would result. (*In re Amanda D.* (1997) 55 Cal.App.4th 813, 821.)

The evidence before the juvenile court did not demonstrate that "exceptional" circumstances justified departing from adoption as the preferred permanency plan based on the parental visitation exception. Mother met her burden of establishing the first prong of the two-prong analysis – she demonstrated that she regularly visited K.M. (*In re Aaliyah R., supra,* 136 Cal.App.4th at p. 450.) Mother failed, however, to meet her burden with respect to the second prong – she failed to demonstrate that she shared a sufficiently strong bond with K.M. that K.M. would suffer detriment from its termination. (*Ibid.*)

The evidence showed that K.J. was a friendly and "very outgoing" child who bonded easily with the adults in her life. The evidence showed a bond between mother and K.M. Mother had custody of and cared for K.M. from K.M.'s birth until K.M. was detained – about eight months. After K.M.'s detention and placement with A.J., mother visited K.M. every weekend and sometimes during the week. When mother arrived for visits, K.M. was always excited to see her. K.M. called mother "mommy" and would run to mother and jump into her arms. K.M. was affectionate with mother during the visits. K.M. hugged and kissed mother. Sometimes K.M. was sad and cried when mother left after visits. All of mother's visits with K.M. were monitored. Mother also regularly called K.M. to say goodnight and to tell K.M. that she loved her. K.M. expected those calls and was excited to speak with mother.

At the same time, the evidence showed that K.M. bonded with A.J., whom K.M. referred to as "auntie," and A.J.'s relatives. A.J. testified that she had no trouble feeding

K.M. or getting her to go to sleep. K.M. was always with A.J. and had no behavior problems. K.M. had a relationship with all of A.J.'s sisters and called A.J.'s sisters and their husbands "grandma" and "grandpa." Just as K.M. was excited to see mother and would run to mother when mother arrived for visits, K.M. was excited to see "grandma" when she would come over and K.M. would run to "grandma." K.M. also established a very close relationship with A.J.'s daughter that maternal aunt nurtured through weekend telephone calls following K.M.'s placement with maternal aunt. As set forth below, K.M. also bonded with her sister, K.G. Thus, it appears the child has no difficulty "bonding" with people in addition to the mother.

As noted, mother's evidence showed frequent and loving contact between mother and K.M., an emotional bond between mother and K.M., and that mother and K.M. enjoyed their visits. Such a showing is insufficient to establish the parental visitation exception to the termination of parental rights. (*In re Andrea R., supra,* 75 Cal.App.4th at p. 1108.) Mother failed to show a lack of substantial evidence supporting the conclusion that she did not occupy a parental role in K.M.'s life (*In re Jasmine D. supra,* 78 Cal.App.4th at p. 1350; *In re Beatrice M., supra,* 29 Cal.App.4th at pp. 1418-1419; *In re Casey D., supra,* 70 Cal.App.4th at p. 51) or that severing K.M.'s relationship with mother would not deprive K.M. of a substantial, positive emotional attachment such that K.M. would be greatly harmed. (*In re Autumn H., supra,* 27 Cal.App.4th at p. 575; *In re Dakota H., supra,* 132 Cal.App.4th at p. 229.)

II. The Sibling Relationship Exception To The Termination Of Parental Rights

Mother contends that the juvenile court erred in failing to find the sibling relationship exception to the termination of parental rights. We disagree.

A. Standard of Review

Challenges to a juvenile court's determination under section 366.26(c)(1)(B)(v) are governed by a substantial evidence standard of review. (See, e.g., *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017, disapproved on another ground in *In re S.B.* (2009)

46 Cal.4th 529, 537, fn. 5; *In re Megan S.* (2002) 104 Cal.App.4th 247, 250-251.)[5] Under the substantial evidence standard of review, "[w]e determine whether there is substantial evidence, contradicted or uncontradicted, to support the conclusions of the juvenile court, resolving all conflicts in favor of the prevailing party, and drawing all legitimate inferences to uphold the lower court's ruling. [Citation.]" (*In re Xavier G.* (2007) 157 Cal.App.4th 208, 213.) "We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts." (*In re Dakota H., supra,* 132 Cal.App.4th at p. 228.) The appellant has the burden to show that substantial evidence does not support the juvenile court's order. (*Ibid.*)

B. The Sibling Relationship Exception

As stated above, when a dependant child cannot be returned to her parents and is likely to be adopted if parental rights are terminated, the juvenile court must select adoption as the permanent plan unless it finds that the termination of parental rights would be detrimental to the child under one of the exceptions specified in section 366.26, subdivision (c)(1)(B). (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) "The statutory exceptions merely permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption." (*In re Celine R., supra,* 31 Cal.4th at p. 53.) One of the specified exceptions is the sibling relationship exception in section 366.26(c)(1)(B)(v). (*Id.* at pp. 53-54.) The sibling relationship exception provides that parental rights will not be terminated and a child freed for adoption if "[t]here would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest,

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5 There is some authority that the abuse of discretion standard might apply. (See *In re Jasmine D., supra,* 78 Cal.App.4th at p. 1351.)

as compared to the benefit of legal permanence through adoption."
(§ 366.26(c)(1)(B)(v).)

"Reflecting the Legislature's preference for adoption when possible, the 'sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a "compelling reason" for concluding that the termination of parental rights would be "detrimental" to the child due to "substantial interference" with a sibling relationship.' [Citation.]" (*In re Celine R., supra,* 31 Cal.4th at p. 61.)

In *In re L.Y.L., supra,* 101 Cal.App.4th 942, the court of appeal held that in applying section 366.26(c)(1)(B)(v) a juvenile court is "first to determine whether terminating parental rights would substantially interfere with the sibling relationship by evaluating the nature and extent of the relationship, including whether the child and sibling were raised in the same house, shared significant common experiences or have existing close and strong bonds. [Citation.] If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption. [Citation.])" (*In re L.Y.L., supra,* 101 Cal.App.4th at pp. 951-952.)

When determining if the sibling relationship exception applies, a juvenile court may consider "future sibling contact and visitation. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 254 [127 Cal.Rptr.2d 876].) Unlike the parent-child relationship, sibling relationships enjoy legal recognition after termination of parental rights. (*In re Valerie A.* (2006) 139 Cal.App.4th 1519, 1524 [43 Cal.Rptr.3d 734]; *In re Miguel A.* (2007) 156 Cal.App.4th 389, 396 [67 Cal.Rptr.3d 307].)" (*In re S.B., supra,* 164 Cal.App.4th at p. 300.)

There was substantial evidence before the juvenile court demonstrating that there were not "exceptional" circumstances justifying the departure from adoption as the preferred permanency plan based on the sibling relationship exception. The evidence showed a bond between K.G. and K.M. K.G. went to almost every weekend visit and

sometimes went to visits during the week. K.M. played with K.G. at the McDonald's and the park. K.M. seemed to enjoy her time with K.G. Occasionally, K.M. was sad when her visits with K.G. ended, but not every time. If A.J. was taking K.M. somewhere and they passed a McDonald's, K.M. would say "Key-Key," apparently K.M.'s name for K.G. K.M. also spoke with K.G. on the telephone. K.G. lived with K.M. at most for the first eight months of K.M.'s life. Mother did not present evidence that showed that K.G. and K.M. shared significant common experiences.

There was substantial evidence showing that mother did not meet her "heavy burden" to establish a "compelling reason" for concluding that the termination of parental rights would be "detrimental" to K.M. due to "substantial interference" with her relationship with K.G. (*In re Celine R., supra,* 31 Cal.4th at p. 61.) Mother did not present evidence that K.M.'s relationship with K.G. is other than the type of relationship one would expect of a young adult and an infant sibling. Although mother presented evidence establishing that K.M. and K.G. were bonded, mother did not present evidence that the relationship was of a type that would justify a finding of exceptional circumstances such as to override the strong preference for adoption. (*In re Celine R., supra,* 31 Cal.4th at p. 53; *In re S.B., supra,* 164 Cal.App.4th at pp. 296-297.) Moreover, legal recognition of the sibling relationship between K.M. and K.G. survives the termination of the mother's parental rights. (*In re S.B., supra,* 164 Cal.App.4th at p. 300.) K.M. was to be adopted by K.G.'s maternal aunt and, as the juvenile court noted, K.G. is an adult and can travel to Arizona to visit K.M.

III. Mother's Due Process And Equal Protection Claims

Mother contends that the juvenile court violated her due process and equal protection rights by exhibiting bias towards her throughout the permanency process, prejudging the termination issues, and interfering with visitation and contact in the critical period before the permanency hearing. The juvenile court did not prejudicially violate mother's rights.

A. Background

On June 5, 2009, the juvenile court considered the Department's request that K.M. be placed with maternal aunt in Arizona. During argument on the issue, mother's counsel argued that mother and K.M. were bonded. The juvenile court responded, "That has not been proven. We're here at a .26. As I said, the appellate court agreed with the court that the mother was not to be given family reunification. If the caregiver has interfered with that and allowed the mother to have as much visitation as she has, causing the child to have some sort of bond with the mother, that's not what the court ordered in this matter. That is actually opposite of what the court had envisioned for this matter."

Later in the same hearing, responding to K.M.'s counsel's stated concern that K.M. was more bonded with her caregiver than maternal aunt, the juvenile court responded, "I am not at all concerned with the mother's bond with the child. I don't think she has had the child in her care. She might be, you know, somewhat like an aunt that comes to visit and brings presents and has a wonderful time with the child, but she hasn't had day-to-day care with this child since the child was detained."

Mother's counsel requested a contested section 366.26 hearing and that K.M. remain placed with her caregiver pending the hearing. The Department's counsel informed the trial court that because it was "going to have to publish, it is going to take a while." The Department's counsel asked the juvenile court if the issue for the section 366.26 hearing would be whether mother could meet her burden of showing that K.M. should not be placed in Arizona because they shared a bond. The juvenile court responded, "Well, you know, that's interesting. Because the longer the child is here and the more that the caregiver gives the mother this sort of 'open visitation' with the child – I mean, I can limit the mother's visitation further, but we're also – this is a detriment to the child. [¶] This is only happening – there is no father listed on the birth certificate. The mother refused to name the father, and then named three fathers. So this is all because the mother is playing games, that we're still, you know, that all of a sudden we have come up against publication." The juvenile court then ordered that mother was to have visitation with K.M. once a month in the Department's office. K.M.'s caretaker was

not to be the monitor for the visits. On June 12, 2009, mother filed an application for rehearing concerning the juvenile court's order limiting visitation to once a month.

The Department's July 2, 2009, Interim Review Report requested that the juvenile court place K.M. with maternal aunt because the ICPC approval would expire if K.M. was not placed in Arizona by July 6, 2009. At a hearing on July 2, 2009, the juvenile court stated that the ICPC originally had been approved on January 6, 2009,[6] and that the ICPC would expire four days later unless it took action. The juvenile court noted that mother had not been offered family reunification, a decision affirmed on appeal, and ordered K.M. placed with maternal aunt in Arizona.

On July 7, 2009, when the juvenile court denied mother's section 388 petition, and addressed its failure to modify its initial order granting mother visitation of three hours three times a week, the juvenile court stated, "At subsequent hearings, so many people were talking all at the same time that the court never modified that visitation order, and that's my fault in doing that. Because from the outset, from the adjudication on, the court had ruled that the mother would not be having family reunification services. I don't think it is fair to the mother or the child to have three visits per week at least three hours per visit, when the court knew that the mother would have her rights terminated." The juvenile court ordered that K.G. was to have monitored visits with K.M. with, apparently, the Department to have discretion to liberalize K.G.'s visitation.

At an August 17, 2009, hearing on mother's requested rehearing before Judge James K. Hahn, Judge Hahn stated that he did not realize that he was going to be the hearing officer and that Referee Levin had an "unsolicited conversation" with him about the case. Judge Hahn stated that he thought he should disclose to counsel that he "did hear from Commissioner [sic] Levin about his matter and what her opinions were on the matter." Mother's counsel objected to Judge Hahn hearing the matter. Judge Hahn stated, "Had I known I was going to be hearing it, obviously, I would have stopped the

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6 The Department's February 13, 2009, Section 366.26 Report states that the ICPC was approved on December 19, 2008.

conversation immediately. When I had the conversation, it was unknown to me that the case would be assigned to me; however, it appears from the last transcript that Referee Levin was aware that the matter was going to be transferred to me." The matter was adjourned until Judge Hahn heard back from the supervising judge.

At an August 20, 2009, hearing on mother's requested rehearing before Judge Margaret S. Henry, Judge Henry stated, "I understand an agreement has been worked out, so [K.M.] has been placed with a relative in Arizona; and the order everyone has agreed to is that mother may have reasonable, monitored visits with a DCFS approved monitor, and I'm not making any specific minimum number of visits because of [K.M.]'s location."

B. Relevant Principles

"'A fair trial in a fair tribunal is a basic requirement of due process.' [Citation.] . . . The operation of the due process clause in the realm of judicial impartiality, then, is primarily to protect the individual's right to a fair trial." (*People v. Freeman* (2010) 47 Cal.4th 993, 1000.) A trial judge's mere expression of opinion based on actual observation of the witnesses and evidence in the courtroom does not demonstrate bias. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1111.) Due process may not be violated merely by the appearance of judicial bias. (*People v. Freeman, supra*, 47 Cal.4th at p. 1006, fn. 4.) On appeal, we review the record to determine whether the appellant "was deprived of [her] constitutional right to a fair and impartial tribunal." (*People v. Guerra, supra,* 37 Cal.4th at p. 1112.) We determine whether judicial bias was so prejudicial that it deprived the appellant of a fair trial as opposed to a perfect trial. (*Ibid.*)

Mother contends that the juvenile court's remarks demonstrated that it had prejudged the outcome of the case and prematurely determined that it would terminate mother's parental rights. Based on its prejudging, mother contends, the juvenile court first changed mother's visitation to once a month monitored by the Department and then ordered K.M. placed with maternal aunt in Arizona in July 2009, both actions designed to

limit mother's visitation with K.M. and having the effect of impairing mother's ability to establish the parental visitation and sibling relationship exceptions.

Mother has failed to establish that her rights were violated. With respect to the juvenile court's limiting mother's visitation with K.M. to one visit a month, mother filed an application for rehearing and mother reached an agreement with the other parties that she was to have reasonable monitored visits with K.M. in Arizona. Judge Henry, the bench officer presiding over the rehearing, did not place any limits on the number of times mother could visit K.M. or the length of those visits. The trial court never limited K.G.'s right to visit K.M. On July 7, 2009, the juvenile court ordered that K.G. was to have monitored visits with her sister. As for the juvenile court placing K.M. with maternal aunt in July 2009, prior to the section 366.26 hearing, the juvenile court placed K.M. when it did because the ICPC approval was about to expire.

Even assuming the trial court attempted improperly to interfere with mother's visitation with K.M., mother fails to establish prejudice. We determined above that mother failed to establish the parental visitation exception to the termination of parental rights in part because mother failed to show that she occupied a parental role in K.M.'s life based on her visitation. (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350; *In re Beatrice M., supra*, 29 Cal.App.4th at pp. 1418-1419; *In re Casey D., supra*, 70 Cal.App.4th at p. 51.) Mother does not explain how she could have established such a role in K.M.'s life if only K.M. had remained in caregiver's care, and mother's visits with K.M. continued unchanged, for an additional four months. Moreover, as a result of mother's application for rehearing, mother was granted reasonable visitation with K.M. in Arizona.

As for the sibling relationship exception to the termination of parental rights, we also determined above that mother failed to establish the exception in part because mother did not show under the applicable standard of review that the termination of parental rights would substantially interfere with K.M.'s relationship with K.G. K.M. was to be adopted by K.G.'s maternal aunt, K.G. is an adult, and K.G. can travel to Arizona to visit K.M. Any interference by the juvenile court with mother's visitation

with K.M. prior to termination of parental rights did not alter K.G.'s right to visit K.M. and to maintain a relationship with her. On July 7, 2009, the juvenile court specifically ordered visitation for K.G.

The maternal aunt was the only possible relative placement from the beginning of the case. The caregiver declined adoption. The juvenile court had determined that reunification services were not appropriate, denied mother's section 388 petition, and placed the child in an adoptive home consistent with the statutory preference for adoption over alternatives. That these decisions preceded termination of parental rights does not demonstrate actual bias.

The contact with another bench officer who was to sit on the case does not show actual bias because there is no record of what was said during that conversation. Generally, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." (*Liteky v. United States* (1994) 510 U.S. 540, 555.) Here, the juvenile court made orders that it felt were appropriate. The juvenile court's now challenged statements during the proceedings are not sufficient to show actual bias. (See *People v. Freeman, supra,* 47 Cal.4th 993

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.